

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAMUEL B.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2007030216

**DECISION**

Gary Brozio, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on June 11, 2007.

Vince Toms, Senior Consumer Services Representative, represented the Inland Regional Center.

Gregory and Sandra B., claimant's adoptive parents, represented claimant. Claimant was not present.

The matter was submitted June 11, 2007.

**ISSUES**

Are claimant's parents entitled to an increase in the Alternative Residential Mode (ARM) rate due to claimant's increasingly "disruptive" behavior?

If an increased ARM rate is warranted, what service level most appropriately meets claimant's needs?

If an increased ARM rate is warranted, are claimant's parents entitled to receive a retroactive payment to October 2006?

## FACTUAL FINDINGS

### *Background*

1. Claimant lives with his adoptive family in Fontana, California. He has lived with them since he was two years old. His adoptive parents have four of their own children (one is still living at home) and six adopted children including claimant (all of them are living at home). The youngest child is 12 years old. Four of the adoptive children are regional center clients.

2. Claimant is a regional center client with a diagnosis of mild mental retardation. He has several mental-health diagnoses, including conduct disorder, depression, intermittent explosive disorder, and disruptive behavior disorder. He takes several medications to manage his mood swings. He is 13 years old and recently went through an adolescent growth spurt. He is now 6 feet 2 inches tall, and he weighs 240 pounds.

3. Claimant's adoptive parents have raised many children, including raising foster children for 14 years. Claimant's parents have had many classes in parenting. In addition, claimant's adoptive mother has a Master's Degree in social work. His adoptive father is a licensed vocational nurse formerly employed by the Department of Corrections.

4. Claimant's mother explained that rearing claimant has always been a "challenge." The challenge increased in 2006 when claimant became an adolescent. His aggressive behavior became more frequent, and he became more dangerous because of his greater size and strength.

5. In October 2006, the parents asked the Inland Regional Center (IRC) for an increase in the then-existing Level 2 ARM rate. IRC staff met with the parents and supplied them with additional supports and training services. The parties agreed to leave the ARM rate at Level 2 and to assess whether the new interventions would be effective.

6. In early 2007, claimant's behavior continued to escalate. The parents felt that the training services and other supports were not helpful in meeting the specific challenges claimant presented. Paramount in the parent's mind was the dangerousness presented by claimant's growing size and strength. The parents told IRC that they were considering an out-of-home placement. Thereafter, IRC staff tried to devise a plan to keep claimant in the family home. There were more discussions, and IRC eventually agreed to increase the ARM rate to Level 3. The parents, however, believed that an ARM rate in the upper ranges of Level 4 was more appropriate. They requested a fair hearing concerning the appropriate ARM rate and retroactive payment to October 2006.

7. On the day of the hearing, IRC staff met with the parents and started a new wrap-around program with EMQ designed to assist the parents with the specific challenges they faced with claimant's size and aggressive behavior. The new program addresses the needs of consumers with significant or severe behavioral problems, including behavior

modification and behavioral intervention. The program will take effect in June 2007. In addition, IRC reoffered out-of-home respite services.

### *The Adoptions Assistance Program and ARM Rates*

8. The federally funded Adoptions Assistance Program (AAP) subsidizes parents who adopt children with developmental disabilities. (Welf. & Inst. Code, § 16115, et seq.) The AAP benefit is administered and funded by the counties, but the regional centers determine the rate level for regional-center clients and inform the county of the appropriate rate. (22 CCR § 35333.) Adoptive parents are entitled to the same rate as staff-operated foster family homes (i.e. residential placement).

9. The question in this case is what ARM “service level” is appropriate for claimant. (22 CCR § 56002, subd. (a)(44).) Since IRC conceded that Level 3 was appropriate for claimant, this case involves a determination of whether claimant’s service level should be Level 3 or Level 4.

10. The determination of service level is based upon a residential facility’s provision of “direct supervision” and “special services” according to the “program design” and the consumer’s IPP. (22 CCR § 56002, subd. (a).) The program design must describe the services designed to enhance the consumer’s capabilities. As relevant here, Level 3 facilities must design a program to address “disruptive” behavior, and Level 4 facilities must design a program to address “severely disruptive” behavior. (17 CCR § 56013, subds. (c) and (d).) Level 4 is further divided into subcategories 4A through 4I, which represent increasing service-level needs. Adoptive parents are not required to design a program, but the determination of their ARM rate is based on what sort of program would be appropriate for the consumer if the consumer were placed in residential care.

11. The key difference between service levels is the amount of staffing and professional consultation. These criteria do not translate well to at-home care. Further, the regulations do not say how to distinguish between “disruptive” and “severely disruptive” behavior for purposes of distinguishing ARM funding at Levels 3 and 4. For these reasons, IRC developed ARM Services Levels Descriptions to assist these determinations. While these Level Descriptions do not have the force of regulation, testimony established that they were based on the considerable experience of IRC staff in placing consumers in residential care over the years. The Level Descriptions were the best evidence of what service level would be appropriate for claimant.

12. The Level Descriptions state that Level 3 care is for consumers with significant deficits in behavior.<sup>1</sup> The deficits may include impulsivity, hyper reactivity, verbal aggression, and physical aggression. The deficits may require intervention and assistance ranging from indirect verbal prompts through physical prompts. At Level 3, it is

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<sup>1</sup> The guidelines also discuss self-help and mobility. This case is concerned only with aggressive behavioral issues because claimant has no mobility concerns and his self-help deficits are not severe. Accordingly, the other considerations are irrelevant to the determination of service level.

very important for the caretakers to recognize the behavioral prodromals of individual consumers because the caretakers must recognize and deal with the antecedent stages of disruptive behaviors, and the caretakers must provide assistance and support in changing the consumer's behaviors.

13. Level 4 is distinguished from Level 3 by the frequency, intensity, and duration of the consumer's deficits in behavior. The Level Descriptions state that the consumers best served by ARM levels 4A through 4C have "restricted health care conditions and severe mobility problems." Level 4D through 4I are reserved for consumers with "the highest need for consistent structure and skilled staff intervention, training and guidance . . ." Testimony established that, in Level 4 facilities, consumers engage in the disruptive behavior from several times a week (at the lower levels) to daily (at the higher levels). When the behavior is considered "severe," the consumers cannot be redirected.

#### *Claimant's Recent Behavior*

14. At home, claimant is resistive and defiant. He has daily tantrums that may include yelling, screaming, cursing, and physical aggression. He frequently damages property at home. He has damaged door moldings and frames, closets, and walls. He has broken house and car windows and furniture. He destroys his clothes. Claimant has been cruel to the household pets, including rattling a bird's cage, kicking a cat, and spraying a cat and a dog with a solution of water and Listerine (the parents use this solution to train a dog). Claimant has set fires around the house, which the parents said were more due to curiosity than intentional destruction. The parents have locked the matches away. He sometimes wets his bed at night, but this has been a life-long problem.

15. The greatest concern in this case is claimant's impulsive, physical aggression toward his parents at home. He has hit both parents, and there have been three, recent incidents where police were called to deal with claimant's violent behavior:

- In November 2006, the father reprimanded claimant for putting an entire bottle of hot sauce on his (claimant's) spaghetti. Claimant became angry and was throwing objects. The father successfully restrained and de-escalated claimant before police arrived. Claimant's mother explained that claimant was not taking his medication because he no longer thought he needed them.
- In January 2007, claimant took a large, heavy flashlight and attempted to break the lights on a chandelier. The father took the flashlight away, and claimant procured a rolling pin. The parents called 911 and the police entered the home with shotguns. Claimant had calmed by the time police arrived, and he remained at home. Again, he was not taking his medications.
- In April 2007, claimant started to cut up his clothes after refusing to take his medication. Claimant then took a tennis racket and swung it around the house and at a chandelier. Claimant then went toward a butcher block full of knives.

The father stopped him, but claimant procured a butter knife and fork and continued an assault.<sup>2</sup> Police were called. Claimant was still agitated when the police arrived because the parents could not deescalate him. The police handcuffed claimant and took him away on a three-day-mental-health hold.

16. Claimant's parents detailed the frequency, intensity, and duration of claimant's behaviors. Since the beginning of the year, claimant hit people three times, lit fires twice, and harmed animals four or five times. In the past month, however, claimant has not hit anyone; he lit only one fire when a guest accidentally left matches out; and he harmed animals twice (kicked and sprayed a dog).

17. Claimant has not been violent toward the other children at home. He once kicked the parent's natural daughter in the stomach. But she was 27 years old, functioned as claimant's social recreation coach, and served an authoritative role.

18. One note stated that claimant sexually acted out but no testimony was given in this regard.

19. Recently, claimant has not been physically violent at school.<sup>3</sup> For the majority of the last year, he had not engaged in any significant destruction of property. But more recently, he broke a window at school, and, on another occasion, he had a tantrum in which he stomped, cried, yelled, cursed, and destroyed a pencil case. There were also reports of destroying books, damaging a picture, and putting holes in walls, but the time period was not established.

### *Opinion Evidence*

20. Deborah Crudup, IRC's Program Manager for Appeals and Complaints, testified regarding the appropriate ARM rate. Ms. Crudup has been with IRC for many years, in many different capacities, and she was qualified to render an opinion on the level of service claimant requires. Ms. Crudup testified that a Level 3 placement would be the most appropriate for claimant. This was because claimant was only intermittently disruptive at home, because he did not engage in significant behaviors at school, and because he was capable of learning and being redirected. Although claimant's behaviors had escalated recently, Ms. Crudup noted that the behaviors were not new, and she expected some escalation as the result of adolescence. Ms. Crudup thought that the new EMQ wrap-around service could provide claimant and his parents with the skills necessary to control claimant's behaviors at home. Ms. Crudup said that a higher ARM rate would not be beneficial, by itself, because it would not provide claimant and the parents with the skills necessary to mitigate or prevent claimant's behavior.

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<sup>2</sup> The parents now lock up the sharp knives.

<sup>3</sup> One school report stated that in 2001 claimant tried to leave school, and, when an aide tried to stop him, he kicked her in the groin and twisted her arm. He also threw things on the teacher's desk on the floor and threw things at a fish tank. No testimony was given regarding this incident and it was very old. A letter from the parents described other, antiquated incidents of claimant causing physical harm and property damage.

21. The parents also rendered an opinion regarding the required level of care. They believed that claimant's behavior warranted and ARM rate in the higher ranges of Level 4.<sup>4</sup> They said that claimant was not a typical adolescent and that his aggressive behaviors had been increasing. Although they attempted to redirect claimant, attempted to set limits and consequences, tried all parenting techniques, and provided alternatives to his destructive and violent behavior (such as a punching bag), claimant was not capable of being redirected. In their opinion, the balance of power in the family had shifted because of claimant's size and strength. They could not restrain claimant by themselves and could not force him to take medications. Moreover, claimant had recently begun to use weapons. They felt that the funding for Level 4 was required to bring someone into the home to assist them with managing claimant's behavior.<sup>5</sup>

22. The father testified that they loved claimant and did not want him in residential placement. They would prefer to keep him in the home. The father also stated that he had recent success anticipating and deescalating claimant's behavior.

### *Evaluation*

23. The IRC's evidence established that claimant's current needs could be met by supervision at a Level 3 residential facility. The types of disruptive behaviors claimant exhibits are not frequent enough to warrant a Level 4 residential placement at this time. If the types of behaviors that led to calling the police were occurring on a weekly or bi-weekly basis, a Level 4 placement would be warranted. But that magnitude of behavior has occurred only three times in seven months, and claimant has not hit anyone in the past month. Furthermore, there is evidence that claimant can be redirected. His father has successfully deescalated him in the past, and he testified that he has had more success in this lately.

24. Despite the parents' extensive experience raising children, their training, and their education, they might be able to learn some new skills from the EMQ program that will help them recognize and deal with claimant's antecedent stages of disruptive behavior. Claimant's mental-health issues create challenges the parents may not have encountered in the past. Paramount among these challenges is getting claimant to take his medications, as it appears that claimant's most-serious disruptive behavior occurs when he does not take his medications. But these sorts of interventions should not require additional staffing; rather, they appear to be interventions that require particular skills that can be learned.<sup>6</sup> Put differently, before raising claimant's ARM rate above Level 3, there must be a final effort to

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<sup>4</sup> Claimant's mother testified that all the referrals for out-of-home respite have been to Level 4 facilities. But IRC staff explained that this was not dispositive of the level of services claimant needed because placement in these facilities depended on availability. Accordingly, the evidence of the Level 4 referrals for respite care did not carry much weight.

<sup>5</sup> Despite their extensive training and experience, the parents did not have the necessary expertise to assess appropriate ARM levels.

<sup>6</sup> Effectively dealing with adolescents with mental health problems undoubtedly requires unique skills. The parents' former education and training may not have taught these skills.

deal with claimant's disruptive behaviors with appropriate behavioral interventions. That is the purpose of the EMQ program. The evidence did not show that Level 3 services are inadequate to service claimant's needs at this time.

25. The evidence also showed that claimant's disruptive behaviors are escalating. He is growing in size and strength. There is a potential for him to cause serious injury if his behavior cannot be controlled. The parents must take care to immediately inform IRC immediately of new instances of violent behavior or other significant changes in circumstances. If claimant's behavior escalates, a further increase in the ARM rate may be warranted.

26. Finally, the evidence established that the Level 3 ARM rate was appropriate beginning in October 2006. The parents are entitled to reimbursement from that time.

### LEGAL CONCLUSIONS

1. The legal standards set forth in Factual Findings 8 through 13 are incorporated into these legal conclusions. Claimant had the burden to establish cause for an increase in the ARM rate by a preponderance of evidence. (Evid. Code, § 115.)

2. Cause was established to increase claimant's ARM rate from Level 2 to Level 3. IRC conceded this increase was appropriate based upon claimant's escalating disruptive behaviors. This conclusion is based on Factual Findings 6 and 14 through 26 and Legal Conclusions 1 through 2.

3. Cause was not established to increase claimant's ARM rate to Level 4. The disruptive behaviors claimant exhibits are not frequent enough to warrant a Level 4 residential placement at this time. This conclusion is based on all Factual Findings and Legal Conclusions 1 and 3.

4. Cause was established to award retroactive payment of the Level 3 rate. The evidence showed that the Level 3 ARM rate was appropriate beginning in October 2006. This conclusion is based on Factual Findings 5 through 7 and Legal Conclusions 1 and 4.

## ORDER

Claimant is entitled to an increase in the ARM rate from Level 2 to Level 3. Claimant's request for a higher ARM rate is denied at this time.

Claimant is entitled to retrospective payment of the Level 3 ARM rate from October 2006.

IRC is ordered to inform the relevant county agency of this decision.

DATED: \_\_\_\_\_

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GARY BROZIO  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.